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Attorneys for Defendant, Sam's East, Inc. (improperly pled as Walmart/Sam's Club)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MAYRA CRUZ,

Plaintiff,

vs.

WALMART/SAM'S CLUB,

Defendants.

Civil Action No. 3:22-CV-5200

NOTICE OF REMOVAL

Defendant, Sam's East, Inc. (improperly pled as Walmart/Sam's Club) (hereinafter referred to as "Defendant"), by and through its undersigned counsel, for the purpose of removing this cause pursuant to 28 U.S.C. § 1441, respectfully submits this Notice of Removal pursuant to 28 U.S.C. § 1446. Defendant appears solely for the purpose of removal and for no other purpose, reserving all other defenses available to it. By way of providing the Court with the basis for Defendant's request for removal, Defendant respectfully submits the following short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon Defendant in such action:

1. State Court Action. Plaintiff, Mayra Cruz ("Plaintiff"), filed the above-captioned action against Defendant in the Superior Court of New Jersey, Law Division, Middlesex County,

New Jersey, on or about July 28, 2022, in a matter pending as docket number MID-L-3715-22. Copies of all process, pleadings, and orders received by Defendant are attached hereto as **Exhibit A** in accordance with 28 U.S.C. § 1446(a).

2. Allegations in the Complaint. In the Complaint, Plaintiff asserts claims against Defendant for negligence alleging that she was injured at a Sam's Club store in Edison, New Jersey on August 7, 2020 and she suffered severe and permanent injuries. The Complaint does not allege the amount of damages being claimed. See Exhibit A.

3. Defendants. Other than fictitious defendants, there are no defendants other than this Defendant.

4. Federal Court Subject Matter Jurisdiction. 28 U.S.C. § 1441(a) provides the basis for removal jurisdiction to this Court as this is a state court action over which this Court has original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship). 28 U.S.C. § 1332 confers subject matter jurisdiction over cases in which there is complete diversity between Plaintiff and Defendant, and in which the amount in controversy equals or exceeds \$75,000.00.

Defendant Sam's East, Inc. operates the subject store where the incident at issue allegedly occurred. Sam's East, Inc. is a corporation organized and existing under the laws of Arkansas with its principal place of business in Bentonville, Arkansas. Sam's East, Inc. is an indirectly wholly-owned subsidiary of Walmart Inc., which is a corporation organized and existing under the laws of Delaware with its principal place of business in Bentonville, Arkansas. Defendant, therefore, is a citizen of Arkansas and Delaware. The Complaint asserts that Plaintiff is a citizen of New Jersey. **See Exhibit A.**

Furthermore, this Court has diversity jurisdiction because the amount in controversy exceeds \$75,000. (**Ex. A**, Complaint) The Complaint alleges Plaintiff "sustained serious and

permanent injuries. She has suffered and will in the future suffer pain; and she has and will in the future be forced to expend large sums of money for medical care and attention; she has lost and will in the future lose large sums of money for wages; she has been and will in the future be unable to pursue her normal daily activities as before.” (**Ex. A**, Complaint, First Count at ¶ 3.) Based upon information provided by Plaintiff to Defendant prior to filing suit, and upon information and belief, Plaintiff is alleging she sustained injuries to her neck and back and hip and underwent a cervical steroid injection, a lumbar facet medial branch block and a cervical epiduralgram.

On August 4, 2022, Defendant’s counsel sent Plaintiff’s counsel correspondence requesting that Plaintiff stipulate that Plaintiff’s damages are less than \$75,000. The correspondence states, in part, that if Plaintiff’s counsel does not stipulate by August 18, 2022, Defendant will proceed to remove this case. (Attached hereto as **Exhibit B** is a true and correct copy of the August 4, 2022 letter and its enclosure.) To date, Plaintiff has not returned the stipulation. While Defendant denies all liability to Plaintiff and denies that she is entitled to any of the relief sought in the Complaint, based upon the allegations of the Complaint and that Plaintiff has not returned the Stipulation as to Damages, the amount in controversy exceeds the \$75,000 jurisdictional amount under 28 U.S.C. § 1332.

Accordingly, for the reasons set forth above, Defendant respectfully submits that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as the properly joined parties are of diverse citizenship and Plaintiff’s claims meets the jurisdictional limit of \$75,000.

5. Timely Filing. The Summons and Complaint was served upon Defendant on July 29, 2022. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(3) in that it is being filed within thirty (30) days of Defendant’s receipt of the Complaint and the time within which it

determined that damages exceeding \$75,000 are being alleged due to Plaintiff not returning the Stipulation as to Damages.

6. State Court Documents Attached. Copies of all process, pleadings and orders received by Defendant are annexed hereto as **Exhibit A** in accordance with 28 U.S.C. § 1446(a).

7. Proper Venue. Venue for removal is proper in this district because this is the district embracing the Superior Court of New Jersey, Law Division, Middlesex County, New Jersey, the forum in which the removed action was pending.

8. Notice to Plaintiff and State Court. Promptly upon filing this Notice of Removal with this Court, Defendant, through its undersigned counsel, will give written notice hereof to Plaintiff, per her counsel, and will file a copy of this Notice of Removal with the Clerk of the Superior Court of New Jersey, Law Division, Middlesex County, New Jersey.

9. Relief Requested. Defendant respectfully gives notice that this action is to be removed from the Superior Court of New Jersey, Law Division, Middlesex County, New Jersey, to the United States District Court for the District of New Jersey.

WHEREFORE, Defendant, Sam's East, Inc. (improperly pled as Walmart/Sam's Club) hereby removes this action, currently pending as Docket Number MID-L-3715-22 in the Superior Court of New Jersey, Law Division, Middlesex County, New Jersey.

Dated: August 24, 2022

/s/ Nada M. Peters
Nada M. Peters, Esq.
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LOCAL CIVIL RULE 11.2 VERIFICATION

Other than the action filed in the Superior Court of New Jersey, Law Division, Middlesex County, which is the subject of this Notice of Removal, the matter in controversy, to the best of the Attorney for Defendant, Sam's East, Inc.'s (improperly pled as Walmart/Sam's Club) knowledge, information, and belief, is not the subject of any other action pending in any court, or of any other pending arbitration or administrative proceeding.

Dated: August 24, 2022

/s/ Nada M. Peters

Nada M. Peters, Esq.